

AMENDED IN ASSEMBLY MAY 11, 2004

AMENDED IN ASSEMBLY JUNE 19, 2003

AMENDED IN SENATE JUNE 3, 2003

AMENDED IN SENATE MAY 7, 2003

SENATE BILL

No. 754

Introduced by Senator Perata

*(Coauthors: Assembly Members Goldberg, Hancock, Laird, Levine,
Lieber, Nation, Simitian, and Wiggins)*

February 21, 2003

An act to add Article 7.6 (commencing with Section 4595) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 754, as amended, Perata. Heritage trees.

Existing law contains various provisions designed to encourage responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities.

This bill would enact the Heritage Tree Preservation Act to prohibit (1) cutting or causing a substantial probability of significant harm to any heritage tree, as defined, in this state, (2) using a heritage tree or heritage tree buffer zone, as defined, in a manner that significantly harms a heritage tree, and (3) cutting a heritage tree pursuant to certain statutory and regulatory exemptions.

This bill would establish the Heritage Tree Preservation Fund in the State Treasury. The bill would authorize the Wildlife Conservation Board to expend the moneys in the fund, upon appropriation by the Legislature, for purposes of the act.

This bill would require all timber operations to comply with the act, except as specified.

This bill would prescribe the criminal and civil penalties for action taken in violation of any provision of the act. By making a violation of these provisions a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.6 (commencing with Section 4595) is
2 added to Chapter 8 of Part 2 of Division 4 of the Public Resources
3 Code, to read:

4
5 Article 7.6. Heritage Tree Preservation Act

6
7 4595. This article shall be known, and may be cited as, the
8 Heritage Tree Preservation Act.

9 4595.1. The Legislature finds and declares all of the
10 following:

11 (a) Most of California's original old-growth forests have been
12 cut down.

13 (b) Currently, no state or federal statute bans the cutting of most
14 old-growth trees in the State of California.

15 (c) California's remaining old-growth trees are a unique
16 natural treasure. California tree species include the tallest, largest,
17 and some of the oldest living things on Earth. Some California tree
18 species live to be thousands of years old.



1 (d) Numerous threatened and endangered species depend upon
2 ancient and old-growth trees for their survival.

3 (e) Old-growth trees and mature forests store more carbon, a
4 component of the greenhouse gas, carbon dioxide, than young
5 trees and tree plantations do. Some California old-growth forests
6 sequester more carbon than any other forest type on Earth,
7 reducing global warming from industrial and other emissions.

8 (f) Most of California's surface water originates in forested
9 areas.

10 (g) Old-growth forests are a rare and threatened forest type.
11 Individual old-growth trees are building blocks for restoring
12 natural forest structure and maintaining ecological diversity.

13 (h) People from all over the world come to California to see our
14 heritage of ancient trees, which benefits the economy of
15 California.

16 (i) The loss of each old-growth tree has a significant effect on
17 the environment within the meaning of the California
18 Environmental Quality Act. Each old-growth tree, living since
19 before statehood, has aesthetic and historic significance, often
20 providing significant benefits to land, air, water, flora, fauna, and
21 noise reduction.

22 (j) The preservation and maintenance of old-growth trees,
23 native vegetation, and wildlife on forestland provide a biologic
24 reserve, and provide benefits to the biological diversity, resilience,
25 and productivity of forestland.

26 (k) The risk of severe fires is increased by removing large,
27 fire-resistant, old-growth trees from the forest, because those trees
28 shade out flammable undergrowth and preserve moisture in the
29 forest.

30 (l) The preservation of heritage trees, heritage tree buffer
31 zones, and biologic reserves is a compatible use in timberland
32 production zones within the meaning of subdivision (h) of Section
33 51104 of the Government Code.

34 (m) The people of the State of California encourage counties
35 and cities across the state to preserve old-growth trees within their
36 jurisdictions.

37 (n) The people of the State of California request that Congress,
38 all federal agencies, and federal land managers extend at least the
39 same protections to old-growth trees on federal lands in California
40 that this measure extends to old-growth trees on nonfederal land.

1 4595.2. (a) It is the intent of the Legislature that this article
2 be construed in accordance with the following primary objectives:

3 (1) To protect old-growth trees in the State of California, in the
4 interest of heritage preservation and ecosystem conservation, for
5 the benefit of present and future generations.

6 (2) To maintain the ability of ancient and old-growth trees to
7 sequester carbon, thereby helping to avoid an increase in the level
8 of greenhouse gases in the atmosphere.

9 (3) To maintain the ability of ancient and old-growth trees to
10 transpire water and to provide shade and large woody debris to
11 streams, rivers, and creeks.

12 (4) To provide habitat for endangered and threatened wildlife
13 species that are dependent on or associated with old-growth trees.

14 (5) To encourage, as appropriate, the retention of dead, dying,
15 downed, or deteriorating trees that provide necessary habitat for
16 wildlife and nutrients essential for forest health and retain
17 moisture that enhances water quality and quantity.

18 (6) To ensure that timber operations and other operations
19 within heritage tree buffer zones are modified and conducted to be
20 consistent with this article and to protect the integrity of the
21 heritage trees.

22 (b) It is not the intent of the Legislature that this act discourage
23 people from growing large trees in long rotation cycles for timber
24 production, or for other private and public trust purposes.

25 4595.3. The following definitions apply to this article:

26 (a) “Emergency” means a sudden, unexpected occurrence
27 demanding immediate action to prevent or mitigate loss of, or
28 damage to, life, health, property, or essential public services.
29 “Emergency” may include fire, flood, earthquake or other soil or
30 geologic movements, as well as riot, accident, or sabotage.

31 (b) “Forestland” means land, other than land owned by the
32 federal government, that was, as of the effective date of this
33 section, available for and capable of growing a crop of trees of any
34 commercial species used to produce lumber and other forest
35 products, including Christmas trees. Commercial species are those
36 species so designated by the board.

37 (c) (1) “Heritage tree” means any old-growth tree on
38 forestland, and listed in paragraph (2), that has at least the
39 minimum diameter at stump height, measured outside the bark, as
40 specified in paragraph (2) for that species. “Heritage tree” means



all stems of multistemmed trees on forestland, and listed in paragraph (2), that have a stem that is an old-growth tree and for which the sum of the cross-sectional areas of all of the stems at stump height, measured outside the bark, is equal to or greater than the area of a circle with the diameter specified in paragraph (2) for that species.

(2) The minimum diameter at stump height is the following for the following tree species:

(A) Coast redwood: 42 inches.

(B) ~~Douglas fir~~ *Douglas-Fir*: 40 inches.

(C) Giant sequoia or sierra redwood: 50 inches.

(D) Hardwoods: 28 inches.

(E) Port orford cedar: 28 inches.

(d) “Heritage tree buffer zone” means an area of protection surrounding a heritage tree. ~~The buffer zone for the heritage trees of the genus *Sequoiadendron* has a horizontal radius of 100 feet. The buffer zone for the heritage trees of any other genus is 35 feet.~~ *surrounding a heritage tree of the Giant sequoia or the Port Orford cedar species. The heritage tree buffer zone for a heritage tree of the Giant sequoia species has a horizontal radius of 100 feet. The heritage tree buffer zone for a heritage tree of the Port Orford cedar species has a horizontal radius of 35 feet.* Any tree for which the trunk at stump height is completely or partially within the area of a buffer zone is in the buffer zone.

(e) “Old-growth tree” means any tree that has a stem that existed in 1850.

(f) “Stump height” means the height at which a tree was cut from the stump if cut, or 12 inches above the ground on the side adjacent to the highest ground level, whichever is closest to the ground.

4595.4. (a) Except as authorized by this section, the following apply:

(1) A person may not cut or cause a substantial probability of significant harm to any heritage tree in the state. Timber and other operations shall be modified and conducted to be consistent with this article and shall protect the integrity of any heritage tree.

(2) A person may not use a heritage tree or heritage tree buffer zone in a manner that significantly harms a heritage tree.

1 (3) A person may not cut a heritage tree pursuant to any of the
2 exemptions in Section 4584 or 4628 or any other statutory or
3 regulatory provision of law.

4 (b) (1) Except as authorized by this section, a native tree larger
5 than eight inches in diameter at stump height may be cut within a
6 heritage tree buffer zone only by a single-tree selection
7 management method.

8 (2) A heritage tree within a heritage tree buffer zone may not
9 be harvested or significantly harmed.

10 (3) Except as authorized by this section, stocking standards
11 adopted by the board pursuant to Section 4561.1 shall be the same
12 or stricter for each heritage tree buffer zone as adopted for the same
13 site classification in the same district.

14 (4) Retained trees to meet the stocking standards of this ~~article~~
15 *chapter* shall be comprised of the largest native trees within the
16 stand prior to harvest. Prior to any preharvest inspection, the
17 boundaries of the heritage tree buffer zone shall be personally
18 flagged, and all trees to be harvested within a heritage tree buffer
19 zone shall be personally marked on both the trunk and the stump,
20 by a registered professional forester.

21 (5) All forest practices within the heritage tree buffer zone shall
22 demonstrably protect the canopy, trunk, roots, and wind-firmness
23 of heritage trees. Heavy equipment associated with timber
24 operations is excluded from any heritage tree buffer zone, except
25 upon a permanent roadway in existence on January 1, 2004.

26 (6) A period of at least 10 years shall elapse before reharvesting
27 a heritage tree buffer zone under this subdivision, except for the
28 removal of a nonnative tree.

29 (7) Slash burning may not be conducted within a heritage tree
30 buffer zone.

31 (8) At least 50 percent of the native understory vegetation
32 present before the commencement of timber operations shall be
33 left living and well distributed within the heritage tree buffer zone
34 to maintain soil stability.

35 (9) The site or habitat, respectively, of a rare, threatened, or
36 endangered plant or animal may not be disturbed, threatened, or
37 damaged.

38 (c) The basal areas and point counts of heritage trees may not
39 be included or used to meet the stocking standards of this ~~article~~
40 *chapter*.

(d) If there is no other feasible routing that avoids greater environmental harm and if the cutting, construction, and maintenance does not endanger the stability, health, and longevity of the heritage trees, trees, other than the heritages trees, may be cut as necessary within a heritage tree buffer zone for the construction and maintenance of any of the following:

(1) A permanent public road by a government agency.

(2) An access way or driveway to reach a government-owned facility.

(3) An access to a utility line or facility.

(4) A private road or driveway as the sole access to an approved and legally permitted structure for human habitation that complies with the California Building Code.

(5) A public fire protection agency community fire break.

(e) A heritage tree or any tree within a heritage tree buffer zone may be cut or harmed if it is necessary in an emergency.

(f) A heritage tree or any tree within a heritage tree buffer zone may be cut or harmed under any of the following conditions:

(1) The tree poses an imminent danger of falling into a utility line or facility.

(2) The tree poses an imminent danger to a utility employee or member of the public.

(3) The tree poses an imminent danger of falling on a residence, hotel, motel, lodge, or other similar place of human habitation, registered historic building, or site of cultural or archaeological importance.

(g) A heritage tree or any tree within a heritage tree buffer zone may be sanitation logged if all of the following occur:

(1) A registered professional forester certifies in a form prescribed by the board that the tree is dead or dying.

(2) The director concurs with the registered professional forester's certification that there is a substantial likelihood of the spread of disease or insect infestation to surrounding trees if the diseased or infested tree is not immediately removed. If the director concurs with the certification, the director shall sign the concurrence.

(h) A prescribed burn for the purpose of reducing the risk of harm to a heritage tree due to fire hazard, insects, disease, or invasive species may be conducted at the direction of the governmental agency responsible for fire suppression. Prior to the

1 prescribed burn, accumulated fuels shall be manually pulled away
2 from each heritage tree within the anticipated area of the
3 prescribed burn to minimize the risk of harm to the heritage tree.

4 (i) Measures such as bracing, tree and limb cabling and guying,
5 cutting away and sealing of infected or infested tissues, balancing,
6 reducing windsail of branches, and applying or injecting
7 protective agents may be performed upon a heritage tree if solely
8 for the bona fide purpose of protecting, enhancing, and extending
9 the wind-firmness, stability, health, or longevity of the heritage
10 tree.

11 (j) (1) Each environmental document, as defined in paragraph
12 (3), shall identify and inventory all heritage trees within the area
13 covered by the environmental document. The environmental
14 document shall describe the measures to be taken to protect a
15 heritage tree, if any heritage trees are believed to be present. Each
16 environmental document shall indicate on its face whether
17 heritage trees are present within the area covered by the
18 environmental document.

19 ~~(2) If a heritage tree or heritage tree buffer zone is present in an~~
20 ~~area covered by an environmental document submitted to the~~
21 ~~department, the department shall provide notice of the filing of the~~
22 ~~environmental document to any person who requests the~~
23 ~~notification in writing.~~

24 *(2) If an environmental document submitted to the department*
25 *indicates on its face that a heritage tree or heritage tree buffer zone*
26 *is present within the area covered by the environmental document,*
27 *the department shall provide notice of the filing of the*
28 *environmental document to any person who requests the*
29 *notification in writing.*

30 (3) For purposes of this subdivision, “environmental
31 document” means a timber harvesting plan, program timber
32 harvesting plan, program timberland environmental impact
33 report, nonindustrial timberland management plan, modified
34 timber harvesting plan, any other timber operations plan, notice of
35 emergency timber operations, an exemption notice pursuant to
36 Section 1038 or 1104.1 of Title 14 of the California Code of
37 Regulations as those sections read on January 1, 2003, other notice
38 of timber operations, plan amendment, categorical exemption
39 filing, or any construction, grading, or use permit application
40 submitted to any state or local agency.

(k) Except as authorized by this section, the following apply:

(1) The board may not adopt a regulation pursuant to this section or any other provision of law that requires or authorizes the cutting of, or significant harm to, any heritage tree.

(2) At the direction of an electrical corporation or local publicly owned utility, a heritage tree may be pruned or cut as necessary to comply with an order or tariff of the California Public Utilities Commission, the Federal Energy Regulatory Commission, the California Independent System Operator, or the Department of Transportation's Office of Pipeline Safety. In siting a new facility, consideration shall be given to the proximity of heritage trees.

(l) Upon determining that the exemption is consistent with the purposes of this article, the board may exempt from this article any person engaged in forest management within a heritage tree buffer zone whose activities are limited to the cutting and removal of trees and brush, other than heritage trees, in compliance with Sections 4290 and 4291. To be exempt, the cutting or removal of brush shall be for the purpose of eliminating the vertical continuity of vegetative fuels and minimizing the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 150 feet on each side from an approved and legally permitted structure for human habitation that complies with the California Building Code. The cutting or removal of brush shall be conducted in compliance with this section. As minimally necessary in order to minimize the vertical continuity of vegetative fuels, heritage trees may be pruned from the ground to a height and in a manner to be determined by the board. Pruning pursuant to this section may not significantly harm a heritage tree.

(1) The cutting, removal, or pruning of a tree pursuant to this subdivision is limited to cutting, removal, or pruning of a tree that will result in a reduction of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crown. The cutting, removal, or pruning of a tree shall be solely for the purpose of fire threat reduction. The cutting, removal, or pruning of a tree shall be in accordance with any statutes enacted, or regulations adopted by the board, in implementation of this section.

(2) (A) Surface fuels, including logging slash and debris, low brush, and deadwood that could promote the spread of wildfire, shall be chipped or removed from all areas of timber operations on



1 or before 45 days after the date of commencement of timber
2 operations.

3 (B) (i) If the surface fuels are not removed on or before 45 days
4 after the date of commencement of timber operations, the surface
5 fuels may be determined to be a nuisance and may be subject to
6 abatement by the department or the city or county having
7 jurisdiction.

8 (ii) The department, city, or county, as the case may be, that
9 abates the nuisance upon any parcel of land subject to the timber
10 operations, may recover costs including, but not limited to, those
11 costs related to investigation, boundary determination, and
12 measurement, by a special assessment or lien against the parcel of
13 land by the department, county, or city. The special assessment
14 may be collected at the same time and in the same manner as
15 ordinary ad valorem taxes, and is subject to the same penalties and
16 the same procedure and sale in case of delinquency that is provided
17 for ad valorem taxes.

18 (3) The site or habitat, respectively, of a rare, threatened, or
19 endangered plant or animal may not be disturbed, threatened, or
20 damaged.

21 ~~(m) This article does not require a revision of the Jackson~~
22 ~~Demonstration State Forest management plan.~~

23 *(m) This article does not require a revision of any management*
24 *plan for the Jackson State Demonstration Forest approved prior*
25 *to January 1, 2010.*

26 (n) This section does not exempt the owner of any timber
27 harvested from registering with the State Board of Equalization or
28 from the payment of any applicable timber yield taxes imposed
29 pursuant to Section 38115 of the Revenue and Taxation Code.

30 4595.5. (a) An agent of the state who is responsible for
31 allocating moneys, credits, or other benefits for preservation of
32 endangered species and natural lands, including, but not limited to,
33 conservation easements, purchases, and purchases of development
34 rights and other interests, may provide assistance to owners of
35 heritage trees and heritage tree buffer zones in obtaining these
36 benefits if available. The benefits include, but are not limited to,
37 state partnership grants under Section 6 of the federal Endangered
38 Species Act (16 U.S.C. Sec. 1535), grants under Title VIII of the
39 federal Department of the Interior and Related Agencies
40 Appropriations Act, 2001 (Land Conservation, Preservation and

1 Infrastructure Improvement, P.L. 106-291), and grants under the
2 federal Land and Water Conservation Fund Act of 1965 (P.L.
3 88-578), or any successor provisions of law, and moneys in the
4 Heritage Tree Preservation Fund established by Section 4595.6.
5 Any moneys obtained from these or any other sources for the
6 purpose of carrying out this article that are not distributed directly
7 to property owners pursuant to this article may be deposited into
8 the fund.

9 (b) The Wildlife Conservation Board shall spend moneys in the
10 fund for the purchase of fee title or of interests in real property of
11 heritage trees and heritage tree buffer zones protected pursuant to
12 this article. An interest in real property shall be for a period of time
13 that is not less than the natural life of the heritage trees protected,
14 in order to protect the integrity and value of the heritage tree or
15 heritage tree buffer zone and to provide habitat for associated
16 wildlife species.

17 4595.6. (a) The Heritage Tree Preservation Fund is hereby
18 established in the State Treasury. Upon appropriation by the
19 Legislature, the moneys in the fund may be expended by the
20 Wildlife Conservation Board for the purposes of this article.

21 (b) Moneys from any source may be deposited in the fund. The
22 Wildlife Conservation Board may accept gifts for deposit into the
23 fund. Proceeds from the sale of gifts of real property or interests
24 in real property by the Wildlife Conservation Board may be
25 deposited into the fund. The Wildlife Conservation Board shall
26 retain for public ownership any gifts of real property or interests
27 in real property that would have qualified for purchase under
28 subdivision (f).

29 (c) All moneys deposited in the fund and any income generated
30 by moneys in the fund shall be available for expenditure by the
31 Wildlife Conservation Board to carry out the purposes of this
32 article.

33 (d) An appropriation or expenditure of moneys in, or income
34 generated by, the fund, for any purpose that is not authorized by
35 this article is void.

36 (e) Moneys in the fund may not be appropriated or expended
37 to repay the principal of any bond, to pay the interest on any bond,
38 or to refund any bond. Moneys in the fund may not be lent or
39 pledged for any purpose.

(f) Income generated by, and the principal of, the fund, are available for the direct, permanent protection of old-growth trees, which includes, but is not limited to, fee title acquisition and conservation easement acquisition.

4595.7. (a) (1) Any person who performs, conducts, orders, or directs timber operations or any other action in violation of this article is subject to the penalties of Article 8 (commencing with Section 4601) of this chapter, and an additional civil penalty in an amount that is equal to the greater of one of the following:

(A) The amount of the proceeds, value, or income received or promised in connection with the violation.

(B) The amount of the anticipated economic benefit to be derived as a result of the violation, if the amount can be reasonably determined.

(C) Three times the fair market value of the tree affected by the violation.

(2) Any moneys collected from the additional civil penalty authorized by paragraph (1) shall be deposited in the Heritage Tree Preservation Fund. In addition to any other penalties imposed by law, the court may seize and confiscate the proceeds, value, or income from the sale of an illegally cut tree. If an illegally cut tree has not been sold, the court may order the tree to be confiscated and sold. If an illegally cut tree is of the genera *Sequoiadendron* or *Sequoia* and it has not been removed from the forest or sold, the court may order that the tree remain in the forest. All proceeds, after actual expenses, from the sale of a tree pursuant to this subdivision shall be deposited in the fund.

(b) The penalties and remedies of this section are concurrent and not alternative to any other civil, criminal, or administrative rights, remedies, or penalties for that violation.

(c) The time period for commencing a civil action pursuant to Section 338 of the Code of Civil Procedure shall be within three years after the cause of action is not deemed to have accrued until the discovery of the facts constituting the grounds for commencing the action.

4595.8. (a) All timber operations shall comply with this article.

1 (b) This article is enforceable by any state or local public
2 officer having appropriate jurisdiction.

3 (c) The board shall adopt regulations that the board considers
4 necessary to implement and to obtain compliance with this article
5 and to protect life, property, and the environment.

6 (d) The board shall adopt regulations, initially as emergency
7 regulations in accordance with subdivision (e), that the board
8 considers necessary to implement and to obtain compliance with
9 Section ~~4595.5~~ 4595.4 and subdivision (a) of Section 4595.7, and
10 to protect life, property, and the environment.

11 (e) The emergency regulations adopted pursuant to subdivision
12 (d) shall be adopted in accordance with the rulemaking provisions
13 of the Administrative Procedure Act (Chapter 3.5 (commencing
14 with Section 11340) of Part 1 of Division 3 of Title 2 of the
15 Government Code). For purposes of that chapter, including
16 Section 11349.6 of the Government Code, the adoption of
17 emergency regulations shall be considered by the Office of
18 Administrative Law to be necessary for the immediate
19 preservation of the public peace, health and safety, and general
20 welfare.

21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.